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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,762	04/09/2004	Jung Ki Lee	A440-JN	1460

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EXAMINER

MAGUIRE, LINDSAY M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/821,762	LEE, JUNG KI	
	Examiner	Art Unit	
	Lindsay M. Maguire	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Final Office Action is in response to the application filed on April 9, 2004, and the amendment filed January 17, 2006, where claims 1, 3, 4-7, 9, 10, 12, 13, 15, and 16 were amended, and claims 17-19 were added.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 through 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,269,556 (Streater '556) in view of U.S. Pat. No. 5,082,125 (Ninni '125).

Streater '556 discloses a board (as defined in Merriam-Webster as a flat usually rectangular piece of material) of predetermined material (23, 31) having a top and bottom surface, a rear and front edge and a pair of side edges (see Figure 1); a ridge (28) extending upward from along the front edge of the board; at least one divider (36) disposed on the top of the surface of the board having a front hook (column 3, lines 32-36) member (38) disposed towards the front end of the divider that hooks over the ridge; and a rear U-shaped hook (column 3, line 40) member (39) formed at the rear end of

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the divider for hooking over the rear end of the board (see Figure 1). In addition, the rear edge of the board is straight from one side to the other with the surface (32) of the rear end of the board curved between the top and bottom surface, the rear edge being a rod that is curved along the top surface. The ridge of Streater '556 has a front and back surface and a top end that is curved between the front and back surface (29) in the form of a rod. Additionally, the Streater '556 discloses a protruding member (40) which protrudes from the bottom surface of said board (23, 31) near the rear end of the board (see Figure 3).

The claims differ from Streater '556 in requiring: (a) the divider being slidably engaged to the rear and front surfaces of the board (claim 1, line 7; claim 4, line 3; claim 6, line 3; claim 7, lines 7 & 12; claim 10, line 4; claim 12, line 4; claim 13, lines 7, 10, & 12; claim 15, line 4; claim 16, line 4); (b) the divider being made of a flat plate (claim 2, line 2; claim 8, line 2; claim 14, line 2).

With respect to (a), Ninni '125 discloses a divider for a display device that is slidably engaged to the rear and front surfaces (column 4, line 57-59), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Streater '556 for basic reasons such as ease of use and versatility of the device.

With respect to (b), Ninni '125 discloses a divider for a display device made of an elongated flat plate (column 4, lines 8-12), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Streater '556 for basic reasons such as manufacturability, available materials, durability, etc.

Response to Arguments

Applicant's arguments filed January 17, 2006 have been fully considered but they are not persuasive.

Applicant lists claim 5 as being "Currently Amended," however the examiner is unable to ascertain how this claim has been amended, seeing as it is word for word the same as the original claim. Therefore, claim 5 is being treated as an --Original-- claim.

Applicant's arguments (see lines 9-17 of page 6) that "the applicant teaches a flat rectangular piece of material" are acknowledged. However, these arguments are not commensurate with the scope of the claim and therefore considered to be more limiting than what is actually being claimed. In particular, the claim (see line 4 of claim 1) says, "said board having a flat top surface" which is not considered to be equivalent to "a flat rectangular piece of material." Additionally, "said board having a flat top surface" fails to distinguish over Streater '566, as the term "surface" is defined by Merriam-Webster as "the exterior or upper boundary of an object or body."

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments (see lines 17-23 of page 6) that "the divider in Streater '566 is not slidably placed" are acknowledged. However, these arguments are considered to be more limiting than what is actually being claimed and are not commensurate with the scope of the claim.

Applicant's arguments (see lines 23-25 of page 6, continuing on page 7, lines 1-4) that "the present invention has a flat top surface which ends at the rear end, and the divider hooks directly onto the rear end over the rear edge of the board" are noted. However, these arguments are considered to be more limiting than what is actually being claimed and are not commensurate with the scope of the claim.

Applicant's arguments (see lines 12-25 of page 7) that "Ninni '125 does not teach a divider that is slidably engaged to the rear and front surfaces" is noted. However, these arguments are considered to be more limiting than what is actually being claimed. In particular, the claims (claim 1, line 7; claim 4, line 3; claim 6, line 3; claim 7, lines 7 & 12; claim 10, line 4; claim 12, line 4; claim 13, lines 7, 10, & 12; claim 15, line 4; claim

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16, line 4) say "the divider being slidably engaged to the rear and front surfaces of the board" which fails to distinguish over Ninni '125 which states "the partitioning devices (10) being capable of quick and easy instillation, removal from and *movement within display shelf*" (column 4, lines 57-59).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time the invention was made modify the device of Streater '566 in view of the teachings of Ninni '125 for such basic reasons as ease of use and versatility of the device.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LMM
1/26/06



RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER